

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

APR 30 2012


CLERK

MISTY CLAUSSEN AND HARLYNE CLAUSSEN,)	Civ. No. 12-4080
)	
PLAINTIFFS,)	
VS)	COMPLAINT
WINNER REGIONAL HEALTHCARE CENTER and GREGG TOBIN,)	
)	
DEFENDANTS.)	

COMES NOW the Plaintiffs, Misty Claussen and Harlyne Claussen, by and through their counsel of record, and for their causes of action against the defendants herein, hereby state and allege as follows:

JURISDICTION

1. Jurisdiction of this Court exists pursuant to 28 U.S.C. § 1332 in that the matter in controversy herein exceeds the sum of Seventy-Five Thousand (\$75,000) Dollars, exclusive of interest, costs and disbursements and that the controversy is between citizens of different states.
2. Plaintiffs Misty Claussen and Harlyne Claussen, a married couple, are residents of the State of Wyoming residing at 41A Ridenour Road, Rozet, Wyoming 82727.
3. Defendants Winner Regional Healthcare Center and Gregg Tobin are residents of the State of South Dakota doing business in the City of Winner, County of Tripp, South Dakota.
4. Winner Regional Healthcare Center is a South Dakota corporation engaged in the business of operating hospitals and medical clinics that provide medical care including surgery;

and that Gregg Tobin was at all times relevant an agent and employee of Winner Regional Healthcare Center engaged in the practice of general surgery.

CLAIMS

5. On May 3, 2010, defendant Gregg Tobin performed surgery on Misty Claussen for the purpose of removing her gall bladder. In performing this surgery, Dr. Tobin negligently departed from the standard of care for a surgeon under the same or similar circumstances in that he failed to accurately and adequately identify plaintiff Misty Claussen's anatomy, resulting in a serious injury to her bile ducts.

6. At the time of the surgery, Gregg Tobin was acting in the scope of his actual, express, apparent, and/or implied authority, as well as with acting within the scope of his employment duties with Winner Regional Healthcare Center.

7. Gregg Tobin's conduct was reasonably foreseeable and therefore imputable to Winner Regional Healthcare Center under the doctrine of respondeat superior; and pursuant to that doctrine, Winner Regional Healthcare Center is responsible for the negligent conduct of Gregg Tobin.

8. As a direct result of defendant's negligent surgery and the injury to her bile ducts, plaintiff Misty Claussen has sustained a significant injury which is permanent in nature and which has and will in the future cause pain, suffering and emotional distress; that she has been and will in the future be caused to expend sums of money for medical care and treatment; and that her earning capacity has been and will be impaired.

9. By reason of the injuries to his spouse, plaintiff Harlyne Claussen has been deprived of plaintiff Misty Claussen's care, comfort, companionship and service.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory, general and special damages in excess of Seventy-Five Thousand (\$75,000) Dollars in an amount to be determined by a jury to compensate Plaintiffs for all injuries and losses sustained as a result of the conduct of the Defendants.
2. For Plaintiffs' costs and disbursements herein.
3. For prejudgment and post-judgment interest.
4. For such further relief as the Court deems proper, including Plaintiffs' attorney's fees and costs in this action.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby respectfully demands a trial by jury on all issues.

Dated this 27th day of April, 2012.

JOHNSON POCHOP LAW OFFICE

By: 

STEPHANIE E. POCHOP

405 Main Street
Gregory, SD 57533
(605) 835-8391
Johnson@gwtc.net

Attorney for Plaintiffs Misty and Harlyn Claussen